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SENATE BILL 852

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cynthia Nava

AN ACT

RELATING TO HEALTH; REQUIRING CERTAIN STATE AGENCIES TO ASSIST
INCARCERATED PERSONS WITH MENTAL DISORDERS OR DEVELOPMENTAL
DISABILITIES TO APPLY FOR AND RECEIVE BENEFITS FOR WHICH THEY
ARE ENTITLED; REQUIRING THE HUMAN SERVICES DEPARTMENT TO ADOPT
RULES TO ENSURE THAT AN INCARCERATED PERSON'S FEDERAL SOCIAL
SECURITY INCOME, FEDERAL SOCIAL SECURITY DISABILITY INCOME,
MEDICAID OR FOOD STAMP BENEFITS STATUS BE SUSPENDED RATHER THAN
TERMINATED UPON INCARCERATION; REQUIRING CERTAIN STATE AGENCIES
TO NEGOTIATE FOR A PRERELEASE AGREEMENT WITH THE FEDERAL SOCIAL
SECURITY ADMINISTRATION; PROVIDING FOR PHOTO IDENTIFICATION FOR
CERTAIN PERSONS UPON RELEASE FROM INCARCERATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Prerelease Benefits Assistance Act".

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1 Section 2. PURPOSE OF ACT. --The purpose of this act is to
2 facilitate the community reintegration of persons with mental
3 disorders or developmental disabilities upon their release from
4 jail, prison, detention centers or other correctional
5 facilities; enhance public safety; and provide cost-effective
6 care by enabling released persons to receive benefits for which
7 they are entitled promptly upon their release from
8 incarceration.

9 Section 3. DEFINITIONS. --As used in the Prerelease
10 Benefits Assistance Act:

11 A. "incarcerated" or "incarceration" means confined
12 in a jail, prison, juvenile detention facility or other
13 detention facility operated by a state, county, regional or
14 local governmental entity that qualifies as a public
15 institution pursuant to 42 C.F.R. Section 435.1009;

16 B. "mental disorder" means a mental disorder or a
17 developmental disability, as defined in the Mental Health and
18 Developmental Disabilities Code or the Children's Mental Health
19 and Developmental Disabilities Act;

20 C. "prerelease agreement" means a formal agreement
21 between the federal social security administration and a
22 correctional facility providing that the correctional facility
23 and the federal social security administration shall work
24 collaboratively to ensure that the applications of incarcerated
25 persons with mental disorders for federal supplemental security

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1 income and federal social security disability income benefits
2 are promptly processed by the federal social security
3 administration;

4 D. "suspended", when referring to medicaid benefits
5 or food stamp benefits, means to place a person's medicaid or
6 food stamp benefits eligibility in an inactive status, rather
7 than a terminated status, such that while the benefits are
8 suspended the person remains eligible for medicaid and food
9 stamps and continues on the state programs; provided that
10 benefits are not payable for services furnished while the
11 person is incarcerated; and

12 E. "suspended" when referring to the federal
13 supplemental security income program or the federal social
14 security disability income program, means to stop cash payments
15 to a person upon incarceration.

16 Section 4. MEDICAID AND FOOD STAMPS ELIGIBILITY--
17 SUSPENDED BENEFITS--RESTORATION OF BENEFITS.--

18 A. The human services department shall adopt rules
19 providing that when a person with a mental disorder who is
20 enrolled in the medicaid or food stamp program is incarcerated,
21 the person's eligibility for medicaid or food stamp benefits:

22 (1) shall be suspended and shall remain
23 suspended for as long as is permitted by federal law; and

24 (2) shall not be terminated unless the human
25 services department determines that the person no longer meets

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1 the eligibility criteria under which he had qualified and is
2 not eligible for medicaid or food stamp benefits pursuant to
3 any eligibility category.

4 B. The human services department shall adopt rules
5 providing that when a person with a mental disorder whose
6 medicaid or food stamp benefits eligibility has been suspended
7 due to his incarceration is released from incarceration, his
8 benefits shall be fully restored unless the human services
9 department determines that the person is no longer eligible for
10 medicaid or food stamp benefits pursuant to any eligibility
11 category.

12 Section 5. APPLICATIONS TO RESTORE BENEFITS-- DISTRIBUTION
13 OF AND ASSISTANCE WITH APPLICATIONS. --

14 A. The human services department, in conjunction
15 with the corrections department, the children, youth and
16 families department and administrators of local and regional
17 jails and delinquency facilities, shall seek to ensure the
18 prompt restoration of benefits to an incarcerated person with a
19 mental disorder whose eligibility for federal supplemental
20 security income, federal social security disability income,
21 medicaid or food stamp benefits has been suspended or
22 terminated during incarceration. These agencies shall take
23 reasonable actions to ensure that cash benefits are reinstated
24 in the month of the person's release and that medicaid and food
25 stamp benefits are reinstated upon release. The agencies shall

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1 take reasonable actions to:

2 (1) identify incarcerated persons with mental
3 disorders whose federal supplemental security income, federal
4 social security disability income, medicaid or food stamp
5 benefits were suspended during incarceration and ask those
6 persons if they wish to receive benefits upon their release;

7 (2) ensure that, if an incarcerated person
8 with a mental disorder wishes to receive benefits upon release,
9 the person is given an application for reinstatement of
10 benefits and assistance in completing and filing the
11 application to the extent practicable at least thirty days
12 prior to his release and that the person is given a copy of his
13 completed and filed application; and

14 (3) provide assistance to an incarcerated
15 person with a mental disorder throughout the application
16 process from competent staff familiar with the characteristics
17 of successful applications. The assistance may be provided
18 directly or arranged through contracts for services and shall
19 include distribution of application forms, assistance with
20 securing medical and other information required to support an
21 application and assistance with completing and submitting
22 application forms.

23 B. With the permission of the incarcerated person,
24 a copy of his application shall be provided to a family member
25 he designates and to any case manager or social worker who will

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1 be working with him upon his release. Permission to distribute
2 a copy of an application for a minor under the age of fourteen
3 is not required.

4 Section 6. PRERELEASE AGREEMENT WITH THE SOCIAL SECURITY
5 ADMINISTRATION. --

6 A. The corrections department, the children, youth
7 and families department and administrators of local and
8 regional jails and delinquency facilities shall, within ninety
9 days of the effective date of this act, take reasonable action
10 to negotiate a prerelease agreement with the local office of
11 the federal social security administration designed to ensure:

12 (1) prompt consideration by the federal social
13 security administration of applications for federal
14 supplemental security income or federal social security
15 disability income benefits on behalf of incarcerated persons
16 with mental disorders; and

17 (2) that the federal social security
18 administration is informed of the expected and actual release
19 dates of persons with mental disorders whose applications are
20 pending or have been approved.

21 B. Once negotiated, the corrections department, the
22 children, youth and families department and administrators of
23 local and regional jails and delinquency facilities shall
24 implement the provisions of the prerelease agreement as soon as
25 practicable.

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1 Section 7. APPLICATIONS FOR INCARCERATED PERSONS

2 TERMINATED FROM OR NOT ENROLLED IN FEDERAL BENEFITS PROGRAMS--
3 PROCEDURES. --

4 A. The human services department, in conjunction
5 with the corrections department, the children, youth and
6 families department and administrators of local and regional
7 jails and delinquency facilities shall assist incarcerated
8 persons with mental disorders whose eligibility for federal
9 supplemental security income, federal social security
10 disability income, medicaid or food stamp benefits was
11 terminated while incarcerated or who were not receiving
12 benefits at the time they were incarcerated to apply, while
13 incarcerated, to receive benefits upon their release. The
14 human services department shall:

15 (1) establish application procedures for
16 benefits on behalf of incarcerated persons with mental
17 disorders in anticipation of their release; and

18 (2) promptly review the applications and, to
19 the extent practicable, complete that review prior to each
20 person's release, provided that such reviews shall be completed
21 within thirty days from the date of receipt of the person's
22 application.

23 B. The review as provided in Subsection A of this
24 section shall assess whether the incarcerated person with a
25 mental disorder is eligible to be enrolled in the federal

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1 supplemental security income, federal social security
2 disability income, medicaid or food stamp benefits programs or
3 is likely to be eligible for benefits upon release. If the
4 human services department determines that the person is
5 eligible to be enrolled while incarcerated, he shall be
6 enrolled but his benefits eligibility shall be placed on
7 suspended status. The person shall be provided the proper
8 documentation to enable him to receive benefits effective upon
9 his release.

10 C. The agencies designated in Subsection A of this
11 section shall provide assistance to incarcerated persons with
12 mental disorders throughout the application process from
13 competent staff familiar with the characteristics of successful
14 applications. The assistance may be provided directly or
15 arranged through contracts and shall include distribution of
16 application forms, assistance with securing medical and other
17 information required to support applications and assistance
18 with completing and submitting application forms.

19 Section 8. PHOTO IDENTIFICATION.--The corrections
20 department and the children, youth and families department
21 shall arrange for incarcerated persons with mental disorders to
22 be issued photo identification upon their release.

23 Section 9. AMENDMENT TO STATE MEDICAID PLAN.--If
24 implementation of the provisions of the Prerelease Benefits
25 Assistance Act requires an amendment to the state medicaid

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1 plan, the human services department shall apply for such an
2 amendment within ninety days of the effective date of that act
3 and shall take reasonable actions to obtain federal approval of
4 the amendment.

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